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Eastern District of Washington

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DATE: **July 12, 2000**

FROM: **Ted McGregor**

TO: **Bankruptcy Standing Advisory Committee; Judge Williams, Judge Rossmeissl, Judge Klobucher, Gary Farrell, Jake Miller, Ford Elsaesser, Dan Brunner, Rolf Tangvald, Bruce Boyden, John Powers, Jim Hurley, Patrick Morrissey, Ian Ledlin**

SUBJECT: REPORT OF MEETING OF STANDING ADVISORY COMMITTEE
June 8, 2000 1:00 p.m., Sun Mountain Lodge, Winthrop WA

Members present: Chief Judge Williams, Judge Rossmeissl, Ted McGregor, Jake Miller, Rolf Tangvald, Dan Brunner, Gary Farrell, Pat Morrissey, Jim Hurley, Ian Ledlin., Other participants attending were Jan Armstrong, Joe Harkrader, Bev Benka, Tap Mennard. Members not present - Ford Elsaesser , Bruce Boyden, John Powers.

At 1:00 the co-chairpersons, Chief Judge Williams and Gary Farrell called the meeting to order. Gary introduced Jan Armstrong, the incoming president of the Bankruptcy Bar Association. Chief Judge Williams reported that the chambers in Spokane is busy but operating well. She also reported that Judge Klobucher is hearing uncontested matters and also backing her up when she is out of town or has a conflict. Judge Rossmeissl reported that the Clerk of Court had recently hired two deputy clerks who took the place of Betty Rogers, who recently left the office, and two part-time temporary deputies. This brings the number of permanent full-time deputies in the Clerk's office in Yakima, to three. Judge Rossmeissl also reported that Chapter 13s continue to be the source of a good deal of work, that the chambers, while busy, has developed a certain rhythm that seems to enhance efficiency.

Ian asked a question of Judge Williams concerning her recusal policy. She reported that the judges had discussed that issue and were working on an assignment policy, but that they were finding it difficult to articulate. However, once it is defined, it will be placed on the court's website.

Gary Farrell gave the report for the association. He announced that Bill Hames, Tom Bassett and Nancy Isserlis had been re-elected to the board of the Association.

He also gave an update on the L. Ward Hanel memorial. He indicated that the memorial is anticipated to include funding for an extern for a one-year, five law school credit . As an additional part of the program, the Association will also provide tuition funding and sponsor the extern at various Association events.

The selection process will most likely be in place by the second semester of the next term at the Gonzaga University School of Law. Needless to say, the law school is most delighted with the program.

Gary further provided a bit of history of the Association's newsletter, NOTES. The publication was initiated in 1988; he noted that the first editor was Pat Hussey of Yakima, with the associate editor being a Spokane Attorney by the name of Patricia Williams. In 1991, the associate editor stayed on, but the editorship was transferred to Matt Anderton, a former law clerk to Judge Rossmeissl. In 1994, there was no associate editor, with Matt still serving as the editor. In 1996 Gary Farrell became the editor, and now in the year 2000, Metner Kimmel has agreed to be the editor. He also noted that Patricia Williams was the first treasurer of the Association until 1994, followed by Frank Kurtz, then Ian Ledlin, the current treasurer. At this point in the discussion it was reported that the Association has approximately $35,000 in its treasury, and that a finance committee had been formed to discuss the use to which the funds might be put. The Association had agreed to assist in the pro bono program.

Ted McGregor, Clerk of the Court, reported that filings are on the increase by approximately 8% over the same period for last year. He noted that the Eastern District is one of very few courts reporting increases; the national trend is one of reduced filings. He also noted that Chapter 12 is due to expire on July 1, 2000 unless extended. He noted that electronic filing is the next initiative in the court's automation efforts. He noted that the intention is to begin with some sort of data interchange with the Chapter 13 office, and then move to the Chapter 7 trustees. He indicated that security and reliability issues need to be addressed. He next announced that he is sending to the judges for their consideration, proposed LBR 5010-1 Reopening Cases. This rule was unanimously recommended at the last meeting of the Advisory Committee, and had been advertised as required by statute. He also spoke to budget concerns, indicating that a new work measurement formula would result in fewer authorized personnel, which would have the effect of reducing resources. He did indicate, however, that he felt that due to the increase in filings, current staffing levels would be able to be maintained for the coming fiscal year. Greater use of automation is certainly indicated.

He also indicated that a billing module was just about complete and that once complete, most likely the $.07 per page cost for access to electronic case information over the Internet, as required by the Judicial Conference of the United States, might need to be introduced in the Eastern District. Certain entities are able to be excused from the fee by court order, most notable the case trustees.

His last note was that he intends to print, perhaps for the last time, the local rules. He provided a set of the rules along with associated information in binders to each member of the committee. He said that he would appreciate their perusal of the materials and report of any errors,

misspellings, etc. they might find. He indicated that once the judges acted on suggested LBR 5010-1 he would then send the document to the printer.

Jake Miller, the Assistant United States trustee, noted that should the proposed changes to the Code be signed into law, many new challenges will be found. He further reported that on the issue of privacy, some years before the National Chapter 13 trustee association began developing a national data base, and that this information is now coming under the scrutiny of the Privacy Czar. Judge Williams reported that there has also been a committee appointed by the Judicial Conference and which committee is working with the Privacy Czar.

Various proposals have been discussed for addressing concerns.

Gary also noted that certain focused legislation concerning alfalfa seed farms was greatly helped by the efforts of Ford Elsaesser.

Dan Brunner next reported on the Chapter 13 office. He discussed various statistics and noted that in proportion, very few old cases with unconfirmed plans are still pending. He also noted that for FY 2000 the 13 office has distributed approximately 13 million dollars in claims and professional fees. Overall, he reported that his office is working quite well, but that it is also very busy.

Jim Hurley gave a report on the mediation program. He indicated that an orientation training session was scheduled for June, and that once it was completed a panel of mediators would be established, and the program would be up and running. He also indicated that a more in-depth skills development training session would be offered to panel members in the fall of 2000. The Association has agreed to support the program in any manner it can, including financial.

Pat Morrissey reported on the work of the Cash Collateral Sub-committee. The committee, composed of Pat, John Powers, Jake Miller, Barry Davidson, Tom Bassett and Ted McGregor, met and discussed the guidelines somewhat in use in the Western District. He reported that it was the consensus of the sub-committee that it is not necessary that guidelines be adopted formally, such as by way of local rule. It was felt that the guidelines may have been developed out of some need, but that the need was no longer present. Most of the concerns articulated in the guidelines were addressed in any case. The feeling of the sub-committee was that the guidelines, although not formally adopted, were in play already. Jake Miller suggested that maybe they should be adopted, however, Pat Morrissey reiterated that that was not the suggestion of the sub-committee. Tap Mennard noted that perhaps it was not so much that the guidelines were a sort of "secret" rule, but that non-regular practitioners lacked an understanding of the local practice. Jake opined that in earlier days the guidelines may have been more useful, but now they were perhaps less required since all participants, from judges to attorneys, have much more expertise in the area of cash collateral. Judge Rossmeissl said that his recollection was that he hasn't seen a copy of the guidelines in quite some time, and did not know if he has a copy. He indicated that his recollection was that the guidelines are fairly intuitive, that even without the guidelines, most likely he would arrive at the concepts of the guidelines without the guidelines. Rolf Tangvald noted that he didn't think that the guidelines were necessary, and that not every local practice

needs to be codified into a local rule. Judge Rossmeissl observed that whereas guidelines might be helpful in first discussions and tend to simplify matters, most particularly where out of state counsel are involved, there didn't seem to be much of a problem when either Eastern or Western district attorneys were involved.

The judges stated that they would consider the recommendation of the sub-committee and let them know if further work was desired.

The report of the Chapter 13 Sub-committee was given by Dan Brunner. He reported that his office is paying greater attention to those cases in which the debtor fails to timely file schedules or a plan. He had suggested to the sub-committee that the process be made more summary by including a notice to dismiss in the notice to creditors, and then if the schedules were not filed, the case would simply be dismissed. This he reported is a practice used in other courts, and with some success. He reported that the majority of the sub-committee had opposed such a practice. He next reported that the sub-committee's committee on fees was getting ready to meet and would have some recommendation by the next meeting of the sub-committee, who would then report to the Advisory Committee. He further reported that that sub-committee had been expanded by two members.

He also stated that he had sent out a series of letter to parties who had objected to proofs of claim, but had not followed through. He said that about half of the letters produced results, but that there still remained about 200 issues yet to resolve. He reported that both his office and the court were exploring a process whereby all or nearly all of the 200 plus cases could be handled at one time for each chambers.

He reported that the change to the local rule that was designed to prevent such backlogs did not appear to be working, however, Judge Rossmeissl suggested that not enough time had passed for the rule to have been adequately tested.

Proper service on objecting parties continues to be a problem; service needs to be in accordance with FRBP 9014 and 7004, and service in accordance with FRBP 2002 is not sufficient. There was also a discussion on how LBR 3007-1 (e) worked concerning when an objection to a claim becomes an adversary proceeding. After some discussion and information that the issue rarely comes up, it was determined to take no action on the rule.

The next Chapter 13 issue that was discussed was the process for dismissals for failure to make plan payments. The practice currently being used, which is a departure from that used by the Chapter 13 trustee for a short period of time, is to include in a notice to dismiss for failure to make payments, an opportunity to object and also, if an objection is made, to set the hearing date and time. The previous practice was to only set a hearing date. He reported that the new procedure was adopted largely due to the additional work the prior practice caused.

He next discussed secured claims. If the plan does not provide for a claim as secured for which a secured proof of claim is filed, he does not think that he can pay on the claim since it is not provided for in the plan. In some cases, a secured claim will render a plan unfeasible. If, of

course, the claim is filed prior to confirmation, then the plan itself could be objected to. It was suggested that the plan language itself might allow the payment of a secured claim based on the proof of claim, even though not provided for in the plan as a secured claim. It was suggested that study be done on the plan language, and if necessary, a solution be sought by changing the plan language. The consensus of the committee was to seek a solution that was efficient, particularly for the trustee, but that tended to not delay addressing issues. The instruction of the committee was for the Chapter 13 Sub-committee to discuss the issue further and come to the next Advisory Committee meeting with some recommendations.

With that the meeting was adjourned by the co-chairpersons.

Action assignments were two:

The Chapter 13 Sub-committee to address the issue of dealing with secured claims filed in cases where not provided for in the plan as secured; and

The Chapter 13 Fees Sub-committee on fees to make recommendations to be brought forward through the sub-committee.

The next meeting of the Advisory Committee is set for Friday, October 27, 2000 in Spokane. Exact times and location to be announced at a later time.